

Commission clarifies such an advance communication to an affiliate provides an undue preference in violation of section 205 of the Federal Power Act (FPA).

Under section 205 of the FPA, the Commission has jurisdiction over all rates and charges for the transmission or sale of electric energy for resale in interstate commerce by public utilities. Section 205(b) prohibits a public utility from making or granting undue preference or advantage to any person or subjecting any person to any undue preference or disadvantage or maintaining any unreasonable difference in rates, charges, services or facilities with respect to jurisdictional transmission or sales.

In *Detroit Edison Company, et al. (Detroit Edison)*, 80 FERC ¶ 61,348 at 62,197-98 (1997), and *Allegheny Power Service Corporation (Allegheny)*, 82 FERC ¶ 61,245 (1998), the Commission provided procedures for notice and posting of affiliate transactions. In particular, *Detroit Edison* established three conditions to guard against preferences to affiliates in sales: (1) A public utility may sell power to its affiliate only at a rate that is no lower than the rate it charges non-affiliates; (2) a public utility offering to sell power to an affiliated marketer must make the same offer, at the same time, to non-affiliated entities via its electronic bulletin board; and (3) the public utility must post simultaneously on its electronic bulletin board the actual price charged to its affiliate for all transactions.<sup>2</sup> However, *Detroit Edison* does not directly address whether a public utility may alert an affiliate to a prospective offering prior to actually posting the offering on its website.

In *UtiliCorp United, Inc., et al.* (in which the Commission authorized a public utility to sell power at market-based rates), the Commission specifically required that all market information that is shared with an affiliate must be shared with non-affiliates:

All market information shared with an affiliated power marketer must be disclosed simultaneously [to non-affiliates]. This includes information on sales or purchases that will not be made. . . . If there is any communication

the affiliate's telephone request for power. The public utility offered the power for sale for only a half-hour the following day. The short duration of the posting enhanced the value of the tip to look for the posting.

<sup>2</sup> The Commission did not specify what it means to "post" information on an "electronic bulletin board." With more pervasive use of the Internet, "posting" information regarding electric sales or transmission transactions generally means to place it on an Internet site.

between the two concerning the utility's power or transmission business—broker-related or not, present or future, positive or negative, concrete or potential, significant or slight—it must be simultaneously communicated to all non-affiliates.<sup>3</sup>

Notifying an affiliate to look for a posting is market information that a public utility must communicate simultaneously to non-affiliates. This is consistent with the Commission's ruling in the transmission context that direct communication by phone is not equal to posting information on OASIS. In *American Electric Power Service Corporation, et al.*, The Commission ruled that transmission providers may not disseminate transmission information to merchant function employees or affiliated marketers by phone, while requiring non-affiliates to search the OASIS. Indeed, the Commission stated that transmission employees may not "selectively inform wholesale merchant employees that transmission information will be posted on the OASIS at a specific time."<sup>4</sup>

Therefore, the Commission clarifies that market information is not limited to an actual offer to sell or purchase power; it includes the timing of electronic postings. Public utilities may not selectively communicate any market information to or with affiliates. Market information that is given to an affiliate must be disclosed simultaneously to all non-affiliates.

By the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. MT99-7-000]

#### Destin Pipeline Company, L.L.C.; Notice of Tariff Filing

April 2, 1999.

Take notice that on March 30, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on May 1, 1999:

<sup>3</sup> 75 FERC ¶ 61,168 at 61,557 (1996), *reh'g denied*, 76 FERC ¶ 61,192 (emphasis in original); *accord* Cambridge Electric Light Company, *et al.*, 85 FERC ¶ 61,217 at 61,898 (1998).

<sup>4</sup> 81 FERC ¶ 61,332 at 62,516 (1997).

Second Revised Sheet No. 123 Original Sheet No. 123a

Destin states that the purpose of this filing is to update Section 20 of the General Terms and Conditions of its Tariff relating to marketing affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc/fed/us/online/rims.htm> (call 202-208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-266-000]

#### Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

April 2, 1999.

Take notice that on March 30, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective May 1, 1999:

First Revised Sheet No. 17  
Second Revised Sheet No. 20  
Second Revised Sheet No. 25  
First Revised Sheet No. 26a  
First Revised Sheet No. 68  
First Revised Sheet No. 86  
Third Revised Sheet No. 87  
First Revised Sheet No. 90  
Second Revised Sheet No. 194  
First Revised Sheet No. 194a  
Second Revised Sheet No. 210  
First Revised Sheet No. 244

Destin states that the purpose of this filing is to revise its Tariff to incorporate certain modifications and clarifications to Rate Schedule FT-2, and to Section